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Chapter 10 – Human Rights and Language Policy in Education

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Abstract

In this chapter, we summarize the arguments underpinning the recognition of linguistic human rights (LHR) as a key human right. While there is ongoing skepticism to the recognition of LHR, particularly among individual nation-states, there is an emerging jurisprudence in international law supporting LHR. These developments provide – at least potentially – greater LHR for ethnolinguistic minorities, including Indigenous peoples, national minorities and other minoritized groups. The area where this is most evident, and potentially most useful, is with respect to the provision of mother tongue or first language education. We thus assess to what extent present language policies and legal instruments facilitate or undermine such rights and also discuss how various research contributions inform arguments for these language rights.

Keywords

Human rights, language rights, linguistic human rights, linguistic genocide, mother tongue/first language education, bilingual education; ethnolinguistic minorities

Introduction

The United Nation's 2004 Human Development Report (http://hdr.undp.org/en/content/human-development-report-2004) links cultural liberty directly to language rights and human development and argues that there is

> … no more powerful means of 'encouraging' individuals to assimilate to a dominant culture than having the economic, social and political returns stacked against their mother tongue. Such assimilation is not freely chosen if the choice is between one's mother tongue and one's future. (p. 33).

Such forced linguistic assimilation of speakers of minority – or, more accurately, minoritized – languages violates several of the United Nations main human rights (HRs) instruments (see below). Also, the apparent "choice" above "between one's mother tongue and one's future" represents false "either/or" thinking – there is no need to choose; one can have both. Supporting the mother tongues (MTs) or first languages (L1s) of children from Indigenous and tribal peoples, national minorities – those minorities who have always been associated with a particular territory but who now find themselves minoritized through conquest, colonization or confederation, or some combination of all three – and other minoritized groups (ITMs) is not only possible but also highly valuable. Indeed, such support in formal public (and private) education has been shown to lead to high levels of bi/multilingualism, improved school achievement, and thus also better prospects for the future for minority language speakers in comparison with using only a dominant language as a teaching language (Baker, 2011; García, 2009). This support presupposes using these mother tongues (MTs) as the main teaching languages for

several years, particularly in the early years of schooling, while teaching a dominant/official language initially as a second language (L2) and, later on, as a teaching language, in mother-tongue-based multilingual education (MLE). This kind of MLE can in fact be seen as a basic human right. Moreover, should a state not offer such opportunities for its minority language speakers, this can be seen as a serious violation of their right to education.

In this chapter, we summarize what human rights, especially linguistic human rights (LHRs), ITM children have in education and to what extent present language policies and legal instruments facilitate or undermine such rights. We also discuss how various research contributions inform arguments for these language rights.

Early Developments

Dominant language speakers have been able to use their mother tongue or first language unhindered for centuries in both the private and public domains. These speakers are seldom aware of, or particularly sympathetic to, these rights being extended to minority language speakers. With that said, there are some countries where minority language rights are legally formalized—for example, in Belgium, Finland, and the autonomous regions of Spain. Over the years, language rights have been formulated pragmatically, in response to particular language contexts, and mostly by lawyers within the realm of international law. The first bilateral agreements (between two countries) were about religious not linguistic minorities, but subsequently the two often coincided. The first multilateral agreement covering national minorities was the Final Act of the Congress of Vienna 1815 (Capotorti, 1979, p. 2). During the 19th century, several national constitutions and some multilateral instruments safeguarded some national linguistic minorities (see the historical overview in Skutnabb-

Kangas & Phillipson 1994; see also May, 2011). The Peace Treaties after the First World War, and major multilateral and international conventions under the League of Nations in the inter-war period, improved the protection of linguistic minorities. After World War II, however, the individual rights formulated by the United Nations were supposed to protect minority persons as individuals; collective minority rights were seen as unnecessary, even dangerous, in part as a response to the way Hitler used the interwar minority treaties as a pretext for war. A better protection of linguistic minorities only began to develop after Francesco Capotorti, as a U.N. Special Rapporteur on the Rights of Minorities, published his 1979 report outlining the possibilities of and prospects for more extensive language rights for linguistics minorities. Even so, these protections, as we shall see, are still far from satisfactory.

It was only in the early 1990s that the area of LHRs started crystallising as a multidisciplinary research area. Academic discussion of human rights within international law and language rights had, prior to that time, remained largely separate. Both academic domains were dominated by lawyers, with few if any sociolinguists involved, and driven by practical-political concerns. The research was mainly descriptive, not analytical. Even today, the interdisciplinary engagement remains nascent. Few lawyers know much about language or education, for example. Many sociolinguists and educationists, who are today writing about LHRs, know too little about international law, political theory, or economics (Grin, 2005: May, 2014a). Most political scientists who discuss language and citizenship actually know little about language or education, even when they profess to (May, 2014b; see also below). The first multidisciplinary book about LHRs appeared in the mid-1990s (Skutnabb-Kangas & Phillipson, 1994). This is a fast growing area where major concept clarification

(Skutnabb-Kangas & McCarty 2008) and further transdisciplinary engagement – traversing sociolinguistics, international law, education and political studies – is still urgently needed (see, e.g. Ives, 2010, 2014; May 2014c).

LHRs can be applied at both the individual and collective levels, and also in relation to languages themselves. *Individual* language rights are foregrounded in the United Nations Convention on the Rights of the Child (CRC) (http://www.ohchr.org/en/professionalinterest/pages/crc.aspx; see Article 30) and the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (http://www.ohchr.org/EN/ProfessionalInterest/Pages/Minorities.aspx). Language rights can be granted to *collectivities* of people (groups, peoples, organizations, or states) who may have rights to the use, development and maintenance of languages, or duties to enable the use, development or maintenance of them. The Council of Europe's Framework Convention on the Protection of National Minorities (http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/157) grants rights to national minority groups, for example. Finally, *languages* themselves (rather than speakers/signers) may have rights attributed to their ongoing use, development and maintenance. The Council of Europe's European Charter on Regional or Minority Languages (http://www.coe.int/t/dg4/education/minlang/Default_en.asp) grants rights to languages, not to the speakers of the languages concerned. "Dialects" and sign languages are, however, explicitly excluded from it.

Major Contributions

Why are LHRs needed in education? The world's spoken languages, particularly ITM languages, are disappearing fast (Harrison, 2007; Nettle & Romaine, 2000). Transmission of languages from the parent generation to children is *the* most vital factor for the maintenance of both oral and sign languages (Fishman, 1991). However, the impact of schooling should also not be underestimated. When more children gain access to formal education, much of their (more formal) language learning, which earlier occurred in the family and community, takes place in schools. If an alien (dominant) language is used in schools—if children do not have the right to learn and use their mother tongue or first language in schools (and, of course, later in their working life and many other domains)—the language is not likely to survive. The result of such language loss also sees a diminution in the cultural knowledge associated with particular languages. In other words, if ITM languages disappear, most of the knowledge associated with them is also lost over time (Maffi, 2005; Stibbe, 2015) – it is not transferred to the replacing languages. Thus educational LHRs, especially an unconditional right to mother tongue medium (MTM) or mother-tongue-based multilingual (MLE) education, are central not only for the maintenance of languages, but also for preventing wider ecocide, historicide ("historical amnesia," see, e.g., May, 2005) and linguistic and cultural genocide (Skutnabb-Kangas, 2000).

Maintenance of ITM languages is also important for both individual and collective identity reasons, as well as for issues of social justice and inclusion. Van der Stoel, for example, writing in his role as High Commissioner on National Minorities for the Organisation for Security and Co-operation in Europe (OSCE), argues that the linguistic protection of national minorities (which can also be extended to other linguistic minorities) rests on two key pillars of wider human rights:

> the right to non-discrimination in the enjoyment of human rights; and the right to the maintenance and development of identity through the freedom to practice or use those special and unique aspects of their minority life - typically culture, religion, and language. The first protection … ensures that minorities receive all of the other protections without regard to their ethnic, national, or religious status; they thus enjoy a number of linguistic rights that all persons in the state enjoy, such as freedom of expression and the right in criminal proceedings to be informed of the charge against them in a language they understand, if necessary through an interpreter provided free of charge.
>
> The second pillar, encompassing affirmative obligations beyond non-discrimination…includes a number of rights pertinent to minorities simply by virtue of their minority status, such as the right to use their language. This pillar is necessary because a pure non-discrimination norm could have the effect of forcing people belonging to minorities to adhere to a majority language, effectively denying them their rights to identity (Organisation for Security and Co-operation in Europe [OSCE] High Commissioner on National Minorities, 1999, pp. 8-9).

It is clear, though, that neither LHRs nor schools alone can guarantee the maintenance and further development of ITM languages – they are both necessary but not sufficient for this purpose. There are no miracle cures or panaceas. With that said, minorities do have some support within the domain of human rights for use of their languages in areas such as public administration, courts, and the media (Alfredsson 2015; Dunbar, 2001; Henrard, 2000). Meanwhile, the right to education is protected in the UN's International Covenant on Economic, Social and Cultural Rights (ICESCR), especially in Article 13.

Beiter (2006) argues convincingly here for the legally binding character of the Article's provisions and the obligations it places upon governments to ensure that education is available, accessible, acceptable, and adaptable for linguistic minorities (see also Tomaševski 2001 and http://www.right-to-education.org/content/primers/_rte03.pdf for these concepts). If MTM/MLE education is not available, the child does not in fact have access to education. Even if the children's MT is used in the first few years of education, schools often see the MTs as a temporary measure to facilitate the ITM child's learning of a dominant language. As soon as s/he is deemed in some way competent in the dominant language, the MT can be left behind, and the child has no right to maintain and further develop it in the educational system. This denies the ITM child the right to education.

Both the right to education (Art. 28, para 1, and Art 29) and the right to use one's MT (Art 30) are also protected in the 1989 UN Convention on the Rights of the Child (CRC). By June 2015, the CRC had been ratified by all other U.N. member states except the USA. Article 30 draws considerably on Article 27 of the 1966 United Nations' International Covenant on Civil and Political Rights (ICCPR)—the famous "minorities" provision, which foregrounds the rights, including linguistic rights, attributable to minorities. Article 30 of the CRC follows the ICCPR Article 27 formulation very closely, simply by adding Indigenous peoples and gender-inclusive language, as follows:

> In those States in which ethnic, religious or linguistic minorities *or persons of indigenous origin* exist, *a child* belonging to such a minority *or who is indigenous* shall not be denied the right, in community with other members of *his or her* own

> group, to enjoy *his or her* own culture, to profess and practice *his or her* own religion, or to use *his or her* own language. (emphases added)

Earlier interpretations of ICCPR Article 27 were seen as only granting negative non-discrimination rights, which did not place any specific obligations on states to support them (as suggested by van der Stoel above) – what the sociolinguist, Heinz Kloss (1977) has described as "tolerance-oriented" language rights. In 1994, however, the U.N. Human Rights Committee (HRC) published a General Comment on Article 27 (4 April 1996, UN Doc. CCPR/C/21/Rev.1/Add.5) supporting a more "promotion-oriented" language right (Kloss, 1977). Promotion-oriented language rights require states to intervene actively in specific support of linguistic minorities and to facilitate the use of ITM languages in both private and, crucially, public language domains (such as education, law and administration). The HRC also interpreted Article 27 as protecting all individuals on the state's territory or under its jurisdiction (i.e., also immigrant and refugee minorities), irrespective of whether they belong to the minorities specified in the article or not. Moreover, it stated that the existence of a minority was not up to individual states to determine but rather needed to be established by objective criteria. This is an important consideration, given that a number of countries, including France, Turkey, Greece, Malaysia, Thailand, Japan, Burma (Myanmar), and Bangladesh have, at various times, denied the existence of any linguistic minorities within their territories, thus obviating any state responsibility towards them. In response, the HRC recognized the existence of promotion-oriented rights for ITM, and imposed positive/active language obligations on states to recognize and provide them. The revised Human Rights Fact Sheet on ICCPR

from the HRC (2005) sustains this interpretation. This interpretation must also be equally valid for CRC Article 30 (see above).

Other international and regionally (e.g. African, European, or Inter-American) binding covenants, conventions and charters are less forthcoming, providing very little meaningful support for LHRs in education. Language as a factor is also accorded in these legal instruments much poorer treatment than other central human characteristics such as "race," gender and religion. Often language disappears completely in paragraph that refer to educational provision. For instance, the (non-binding) 1948 United Nations Universal Declaration of Human Rights paragraph on education (26) does not refer to language at all. Similarly, the U.N. International Covenant on Economic, Social and Cultural Rights (ICESCR), initially mentions language on a par with race, color, sex, religion, etc., in its general Article 2.2. But in its educational Article 13, it refers only to "racial, ethnic or religious groups", omitting reference to language or linguistic groups. When "language" *is* present in Articles on education, especially MTM/MLE education, the formulations are more vague and/or contain many more opt-outs, modifications and claw-backs than other Articles. These other Articles create obligations and contain demanding formulations, whereby the states are viewed as firm duty-holders and are required ("*shall*") do something positive in order to ensure the rights.

These patterns of vague formulations, qualifications and alternatives with respect to LHRa appear even in more recent binding minority or language specific international and regional instruments. In the Council of Europe's 1998 European Charter for Regional or Minority Languages, for example, a state can choose which paragraphs or subparagraphs it wishes to apply (a minimum of 35 is required). The education Article 8 includes a range of

caveats, including “as far as possible,” “relevant,” “appropriate,” “where necessary,” “pupils who so wish in a number considered sufficient,” and “if the number of users of a regional or minority language justifies it,” as well as a number of similar alternatives, as in “to allow, encourage *or* provide teaching in *or* of the regional or minority language at all the appropriate stages of education” (emphases added). Similar caveats and opt-outs abound in the Council of Europe’s Framework Convention for the Protection of National Minorities (1998, Article 14.2;):

> In areas inhabited by persons belonging to national minorities traditionally or in *substantial* numbers, *if there is sufficient demand*, the parties shall *endeavour* to ensure, *as far as possible* and *within the framework of their education systems,* that persons belonging to those minorities have *adequate* opportunities for being taught in the minority language **or** for receiving instruction in this language (emphases added for modifications).

The Framework Convention has been criticised precisely for its indeterminacy with respect to these matters. Patrick Thornberry’s general assessment from a legal perspective is particularly direct:

> In case any of this [provisions in the Convention] should threaten the delicate sensibilities of States, the Explanatory Report makes it clear that they are under no obligation to conclude 'agreements'… Despite the presumed good intentions, the provision represents a low point in drafting a minority right; there is just enough substance in the formulation to prevent it becoming completely vacuous. (1997, pp. 356-357)

Of course, the balance between binding formulations and sensitivity to local conditions is a difficult one to achieve. Still, the Charter permits a reluctant state to meet the requirements in only a minimalist way. Such states can do so simply by claiming that a provision was not "possible" or "appropriate," or that numbers were not "sufficient" or did not "justify" a provision, or that it "allowed" the minority to organize teaching of their language as a subject, at their own cost. The (non-binding) U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities suffers from similar vague formulations (but see the articles by lawyers in Caruso & Hofmann, 2015, for some positive interpretations).

With respect to international standards specific to Indigenous and tribal peoples**,** ILO (International Labour Organization) Convention No. 169 and the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), are the two most important legal instruments (Thornberry, 2002; Xanthaki, 2007). ILO 169 specifically addresses the education of Indigenous and tribal peoples in Part VI (Articles 26 to 31). Article 28, paragraph 1 asserts, for instance, that Indigenous and tribal children *must* be taught to read and write in their own Indigenous language or in the language most commonly used by the group to which they belong. Article 29, paragraph 2 provides that adequate measures must be taken by the State to ensure that Indigenous and tribal children also have" the opportunity to attain fluency in the national language or in one of the official languages" of the State. ILO 169, as a treaty, creates binding legal obligations for those States that ratify it. At the time of this writing, however, only 22 of ILO's 185 member States had done so

(http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_I

NSTRUMENT_ID:312314:NO). This is the result, principally, of a fear among many U.N. member states that recognition of greater Indigenous autonomy and control over education might lead, in turn, to demands for wider social and political autonomy over time (see May, 2012, chapter 8 for further discussion).

Remaining with education, UNDRIP's (2007) Articles 13 and 14 seem to grant some positive promotion-oriented language and education rights. Specifically:

> 13.1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
>
> 13.2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.
>
> 14.1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
>
> 14.2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
>
> 14.3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

The first two articles imply that the child has the right to learn her/his Indigenous mother tongue or first language, or even to reclaim a heritage Indigenous language. And yet, since most forms and levels of the “education of the State” (Article 14.2) use the “state” languages as a medium of instruction, the child cannot have access to this education without first knowing the state (or dominant) language. Thus, while these quotes together might imply that achieving high levels of bilingualism in an Indigenous and state language is a primary goal in the education of an Indigenous child, the limited options that Indigenous peoples have to “choose” an education other than the “free” education offered by the state (almost always only in the dominant, state language) is, in fact, severely limited. Parents may well have an option for educating their children in an Indigenous language but it is, invariably, also at their own cost. How many Indigenous and tribal peoples can afford this? There is nothing in these articles about the state having to allocate public resources to Indigenous-language-medium education – a promotion-oriented language right, in effect. And, in any case, a “Declaration” such as UNDRIP is in the end not legally binding.

Another universal instrument, the 2007 U.N. Convention on the Rights of Persons with Disabilities (http://www.un.org/disabilities/convention/conventionfull.shtml) suffers from a different limitation. While it is especially important for the Deaf people and Sign languages, it contains few LHRs with respect to them, despite their centrality to issues of recognition, access and opportunity for Deaf people.

The (non-binding) 1996 Hague Recommendations Regarding the Education Rights of National Minorities (http://www.osce.org/hcnm/32180) from the OSCE's High Commissioner on National Minorities is another example of a clear statement on LHRs,

although the degree to which individual states adhere to it remains an open question. Developed by a small group of experts on HRs and education, it represents an authoritative interpretation of the minimum standards due national minorities (although, by extension, it could also potentially apply to all linguistic minorities) with respect to education. For example, in the section, “the spirit of international instruments,” bilingualism is seen as a basic right and responsibility for persons belonging to national minorities (Article 1), and states are reminded not to interpret their obligations in a restrictive manner (Article 3). In the section on "minority education at primary and secondary levels," MTM education is recommended at all levels, including bilingual teachers in the dominant language as a second language (Articles 11-13). Teacher training is made a duty on the state (Article 14). Finally, the Explanatory Note states that, "submersion-type approaches whereby the curriculum is taught exclusively through the medium of the State language and minority children are entirely integrated into classes with children of the majority are not in line with international standards" (p. 5). UNESCO’s 2003 Position paper, “Education in a Multilingual World” (http://unesdoc.unesco.org/images/0012/001297/129728e.pdf) follows the Hague Recommendations fairly closely.

Some multilateral instruments also include both more general and educational LHRs. Robert Phillipson (2012) outlines the following, for example, in relation to the Nordic context:

> Inter-Nordic collaboration has resulted in the governments of the Nordic countries now being committed to maintaining the vitality of national languages while promoting competence in international languages, particularly English.

> A *Declaration on a Nordic Language Policy* was approved in 2006 by the Nordic Council of Ministers, and promulgated in Danish, Faeroese, Greenlandic, Finnish, Icelandic, Norwegian, Saami, Swedish, and English[i]. The document specifies the language rights of all residents in a Nordic country, and sets out goals for language policy. It encourages key institutions to develop long-range strategies for choice of language, the parallel use of languages, and language instruction. Since this is the first time that government-level language policy in this area has been made explicit, it is positive that language policy is not merely being left to market forces. The underlying thinking is both/and rather than either/or: not a focus on a single medium of instruction (an English-medium or local language-medium school or university) but a combination. (p. 229)

Work in Progress

New interpretations or enlargement of the scope of older instruments, and the development of non-binding declarations or recommendations (e.g. the UNDRIP and the Hague Recommendations) in a more binding direction may in time improve the situation for ITMs and the languages they speak/sign. A possibility to entice states to not only grant more LHRs but also to implement them more effectively and consistently might be to bring cases to court on the basis of the International Convention for the Prevention and Punishment of the Crime of Genocide (E 793, 1948). When the United Nations did preparatory work for what became this Genocide Convention, linguistic genocide as a central aspect of cultural genocide was initially discussed alongside physical genocide as a serious crime against humanity (Capotorti, 1979, p. 37). When the U.N. General Assembly finally accepted the Convention, however, Article III covering linguistic and cultural

genocide was voted down by 16 states (see Official Records of the General Assembly, Third Session, Part I, Sixth Committee, 83rd meeting). It is thus not included in the final Convention of 1948.

The present Convention (1948) has five definitions of genocide in its Article 2. The article starts with "In the present Convention, genocide means any of the following acts committed with intent *to destroy*, in whole or in part, a national, ethnical, racial or religious group, as such" (emphasis added). Two of the definitions fit most Indigenous and minority education today:

> II(e), forcibly transferring children of the group to another group; and
>
> II(b), causing serious bodily *or mental* harm to members of the group (emphasis added).

Assimilationist submersion education where Indigenous and minority children are forced to accept teaching through the medium of dominant languages can cause serious mental harm and often leads to the students using the dominant language with their own children later on, i.e. over a generation or two the children are linguistically, and often in other ways too, forcibly transferred to a dominant group. This happens to millions of speakers of endangered languages all over the world (Harrison, 2007; Skutnabb-Kangas, 2000). If there are no schools or classes teaching the children through the medium of the threatened Indigenous or minority languages (ITMs), the transfer to the majority language speaking group is not voluntary. Meaningful alternatives do not exist, and parents do not have enough reliable information about the long-term consequences of the various choices they are forced, by circumstance, to make. Because of this, disappearance

of languages cannot be labelled language death or language suicide (Crystal, 2000), even if it might at first seem that the speakers are themselves 'voluntarily' abandoning their languages (see the initial U.N. quote).

Most ITM children (and their parents) want, in their own best interests, to learn the official language of their country. This is also one of the important LHR principles (access to state languages) and implies for ITM speakers the right to become bilingual in their MT/L1 and the state language. Most children also want to learn English if it is not one of the official languages, given its current ascendancy as the dominant world language. But learning new languages, including dominant languages, should not occur in a subtractive bilingual environment that does not value children's bilingualism/multilingualism or its maintenance. Subtractive formal education, which teaches children (something of) a dominant language, but almost always at the cost of their mother tongue or first language, is thus genocidal. This dominant language can be official (e.g. French in France) or semi-official (e.g. English in the USA); it can be the language of a numerical majority (as in France or the USA); often it is a colonial language spoken only by a small but powerful numerical minority (e.g., many African countries). An allied but equally false educational philosophy claims that minority children learn the dominant language best if they have most of their education through the medium of the dominant language. Many studies have demonstrated exactly the opposite. If children are taught an additional language in an additive bilingual context, which recognizes the value of bilingualism and its ongoing maintenance, and uses the students' bi/multilingual linguistic repertoire as a *basis* for learning, they are more likely to achieve academically (Baker, 2011; García, 2009; May & Dam, 2014). Moreover, the longer the mother tongue/first language remains the main

medium of education, the better ITM children learn the dominant language and other subjects, while also of course, maintaining and developing further the languages they already know (McCarty, 2005; Thomas & Collier 2002; Tollefson & Tsui, 2004).

Some legal scholars claim that the deliberate intention of linguistic genocide required by Article 2 of the International Convention for the Prevention and Punishment of the Crime of Genocide the Convention is difficult to establish. For obvious reasons, no state or educational authority can today be expected to express *openly* an intention to "destroy" a group or even to "seriously harm" it. Instead, it can be deduced from the results of educational and wider state policies. In other words, if the state organizes educational structures that are known to lead to negative results for ITM students, this can be seen as "intent" in the sense of Article 2. If the educational approaches adopted towards ITM clearly run counter to the widely attested research evidence supporting bilingual education, and the related maintenance of ITM languages within education, and have been and are organised against what this widespread research evidence proposes, then state authorities can and should be held accountable for continuing such policies at the direct expense of ITM children. The ongoing prohibition of ITM languages within education, the associated mental harm caused, and the forcible transfer of ITM children from speaking their MT/L1 to speaking the dominant (state) language must be seen as deliberate and intentional acts on behalf of states from discourse-analytical, sociolinguistic, sociological, political science, psychological and educational policy analysis perspectives (see Skutnabb-Kangas & Dunbar 2010, chapters 6 and 7 for legal details on genocide and on subtractive education as a crime against humanity).

Problems, Difficulties, and Future Directions

A major problem in any analysis of LHRs is that, even if minorities have been granted the right to found private schools with their own language as the main medium of education, individual states, as we have seen, do not have a legally enforceable duty to fund any associated costs. This was made clear in the landmark 1968 Belgian Linguistic Case (http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57525). Few minorities can bear the full cost of primary education through the medium of their own languages, while at the same time contributing through their taxes to dominant language-medium education. If the Human Rights Committee's reinterpretation of Article 27 of the ICCPR starts having some effect (and new litigation would be needed to test this), the economic hurdles might be solved. After all, it hardly costs the state more to change the language in minority schools, as compared to using the dominant language (see Grin 2005 and this volume for the economics of minority protection). This is also pointed out in The Asmara Declaration on African Languages and Literatures, from a conference convened in January 2000 when demanding MTM/MLE education (see http://www.culturalsurvival.org/publications/cultural-survival-quarterly/none/asmara-declaration-african-languages-and-literatures).

Meanwhile, in many language policy and political theory discussions, particularly the latter, there is an overt skepticism and at times outright hostility towards the ongoing maintenance of private and, especially, public multilingualism, when these include/incorporate the use of the ITM language as languages of educational instruction. These commentators see the ongoing bi/multilingualism of ITMs as delimiting the possibilities of their individual integration into the national society and their successful acquisition of the dominant (national) language(s), with the ongoing maintenance/support of

minority languages constructed as a wilful form of communal ghettoization. Any accommodation of public (rather than private) multilingualism – via, for example, MTM/MLE – is also constructed as preventing these groups from learning the dominant state language well enough to communicate effectively in the wider society, as an obstacle to their social mobility, and as a potential threat to the wider stability of the state. These tropes are most evident in recent political theory discussions of language rights and orthodox liberal conceptions of citizenship and are often very strongly stated (see, e.g., Barry, 2001; Van Parijs, 2011). However, given their ostensible concerns with language, it is surprising that the work of many of these political theory researchers remains remarkably uninformed about relevant sociolinguistic and educational research. Stephen May (2003, 2014a, 2014b, 2014c) has made this point in relation to both opponents of language rights, such as Pogge, Laitin and Reich, and van Parijs, as well as proponents such as Kymlicka (May, 2012, ch. 4). For a similar critique, see Ives (2010, 2014) and Skutnabb-Kangas (2009). The majority of these political theorists ignore the extensive literature in sociolinguistics that has, over the last 50 years, addressed in detail questions of linguistic identity, status, rights and use in the formulation of language policies at local, national and supranational levels and, similarly, the challenges and opportunities of addressing the linguistic complexities of multilingual communities in relation to the same (see, e.g., May, 2012; Ricento, 2006 for useful summaries). The normative assumptions that underpin much work in political theory also remain primarily supported by hypothetical and/or abstract examples rather than actual (multilingual) contexts.

The often-appalling ignorance about basic language matters in ostensibly interdisciplinary work on language rights is a serious issue, and it should be the ethical

responsibility of researchers addressing LHRs, from whatever disciplinary perspective, to remedy it. As we have suggested, political theorists are particularly culpable in this regard, but they are not the sole offenders. Important language status planning decisions are often based on false information, even in situations where the correct information from attested research is easily available and has in fact been offered to the decision makers. More transdisciplinary cooperation between human rights lawyers and legal scholars, sociolinguists and educationists is urgently needed. Western researchers often suffer from ethnocentricism, and lack the necessary knowledge of the languages and cultures of others (see criticism in, e.g., Hountondji 2002; Smith , 2012). Arguably, most of them, even proponents of multilingualism and MLE, also often ignore or simply do not know about research that is not published in English.

Lack of LHRs is not (only) an information problem, however. The political will of states to grant LHRs remains the key challenge to their effective implementation. Neoliberal economic principles and market forces dovetail with dominant (normative) cultural norms to diminish ITM claims for language rights. When this is combined with subtractive dominant language medium education, often seen as the only realistic option for ITM children, it leads inevitably to the dispossession of their linguistic and cultural capital (Harvey, 2005). Human rights, especially economic and social rights, are necessary, according to the legal scholar Katarina Tomaševski (1996), to act as correctives to the free market. She states that the "purpose of international human rights law is [...] to overrule the law of supply and demand and remove price-tags from people and from necessities for their survival" (p. 104). These necessities for survival include not only basic food and housing (which would come under economic and social rights), but

also the necessary means for the sustenance of a dignified life, including basic civil, political and cultural rights. LHRs can be said to form a key part of the latter – that is, cultural rights. In contrast, the generally negative attitudes behind dominant language educational state policies lead to the diminishing numbers of languages worldwide, along with their speakers, and promote a false view of individual and collective monolingualism as something

- normal and natural; however, most countries are multilingual;
- desirable: more efficient and economical; however, if citizens do not understand the language they are governed (and educated) in, and if huge talent is wasted because children do not profit and are even harmed by formal education, this is inefficient and wasteful; and
- inevitable: modernisation leads to linguistic homogenisation and only romantics regret it; however, linguistic diversity and multilingualism enhance creativity and are necessary in information societies where the main products are diverse ideas and diverse knowledges.

In addition, states seem to see the granting of LHRs as potentially divisive, undermining wider social cohesion and inclusion within the state (see Fenton & May, 2002; Hutchinson, 2005). The rationale here is that if minorities are able to maintain distinct ethnic identities this somehow promotes ghettoization and, even, balkanization. Moreover, as the earlier discussion of political theory highlighted, education is attributed as the key mechanism by which this ghettoization/fragmentation most often occurs. In effect, MTM/MLE education for minorities is constructed as the catalyst for wider social and political division to occur. And yet, any sensible (or even engaged) rendering of

history would suggest the opposite. Ethnic conflict, where language is a factor, is almost always precipitated by the *denial* of language rights, not their *recognition*. This is true historically of conflicts in Sri Lanka, Spain, Belgium and the Balkans, for example, and is still currently evident in Turkey (with respect to Kurdish) and China (with respect to Tibetans and Uyghurs). Indeed, it is the ongoing pursuit of prescriptive monolingual language policies within multilingual states that is demonstrably the greatest threat to social and political stability. As de Varennes (1996) rightly observes,

> any policy favouring a single language to the exclusion of all others can be extremely risky ... because it is then a factor promoting division rather than unification. Instead of integration, an ill-advised and inappropriate state language policy may have the opposite effect and cause a levée de bouclier. (p. 91)

Thus, as we have argued, the pursuit of more extensive linguistic human rights for ITM speakers is critical for maintaining their (minoritized) languages, ensuring a meaningful right to education, and avoiding linguistic genocide. However, it is equally clear that, if implemented effectively, LHRs are also a key mechanism for fostering more socially just, inclusive, stable and plural states/societies in our demonstrably multilingual world. This is why the case for LHRs, despite ongoing opposition to it, is still such an important and compelling one to make.

Cross-References

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